

**#S-7**

**signed 5-17-04**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

**ILLIG INDUSTRIES, INC.,**

**DEBTOR.**

**CASE NO. 01-20189-7  
CHAPTER 7**

**DAVID SEITTER, Trustee,**

**PLAINTIFF,**

**v.**

**ADV. NO. 03-6015**

**GUILFORD MILLS, INC.,**

**DEFENDANT.**

**In Re:**

**EXCEL LAMINATES, INC.,**

**DEBTOR.**

**CASE NO. 01-20190-7  
CHAPTER 7**

**DAVID SEITTER, Trustee,**

**PLAINTIFF,**

**v.**

**ADV. NO. 03-6033**

**GUILFORD MILLS, INC.,**

**DEFENDANT.**

**ORDER (1) DENYING MOTIONS BY DEFENDANT GUILFORD MILLS, INC.,  
TO STAY PROCEEDINGS, AND (2) DIRECTING GUILFORD MILLS TO**

**WITHDRAW THE MOTION IT HAS FILED IN NEW YORK TO ENFORCE  
THE ORDER THAT CONFIRMED ITS PLAN OF REORGANIZATION**

These proceedings are before the Court on identical motions filed by defendant Guilford Mills, Inc. (“Guilford”), in each case. Guilford appears by counsel Nancy S. Jochens of Blackwell Sanders Peper Martin LLP. Plaintiff Carl R. Clark, successor trustee to David C. Seitter, appears by counsel Scott Goldstein and Eric L. Johnson of Spencer Fane Britt & Browne LLP. The Court reviewed the relevant materials and held a hearing on the motions on May 13, 2004. The Court has reviewed the applicable pleadings, considered the parties’ arguments, and is now ready to rule.

**FACTS**

The relevant facts are not in dispute. Debtors Illig Industries, Inc. (“Illig”), and Excel Laminates, Inc. (“Excel”), filed Chapter 7 bankruptcy petitions on January 24, 2001, in Kansas City, Kansas. David C. Seitter was originally appointed as the trustee for both cases, but later resigned and was replaced by Carl R. Clark. The change in trustee has not changed the bankruptcy estates’ positions in these proceedings and has no impact on this decision, so the Court will simply use “the Trustee” to refer to whichever trustee was serving at the time the relevant events took place.

The Trustee contends that Illig paid Guilford about \$20,000 during the 90 days before Illig filed for bankruptcy, and that the payments constitute preferences that he can avoid under § 547(b) of the Bankruptcy Code. He contends that Excel paid Guilford about

\$1.6 million during the 90 days before Excel filed for bankruptcy, and that these payments also constitute avoidable preferences.

On March 13, 2002, Guilford filed a Chapter 11 bankruptcy petition in the Southern District of New York. Guilford did not give Illig, Excel, or the Trustee notice of any of the various deadlines set in its bankruptcy case except by publication. Guilford's plan of reorganization was confirmed on September 20, 2002, and substantially consummated about two weeks later.

During the last week of 2002 and the first week of 2003, the Trustee sent Guilford demand letters about the alleged preferences paid by Illig and Excel. About two weeks later, he filed complaints seeking to recover them from Guilford. The complaint for Illig's bankruptcy estate was assigned Adversary No. 03-6015, and the one for Excel's estate was assigned Adversary No. 03-6033.

In response to the complaints, Guilford made no preliminary motions under Federal Rule of Civil Procedure 12(b), but filed essentially identical answers on March 28, 2003. It admitted the paragraphs of the complaints that alleged this Court had jurisdiction of the proceeding and venue was proper here. As an affirmative defense in each proceeding, Guilford alleged that: (1) the Trustee was not a known creditor of the Guilford bankruptcy estate; (2) it had given publication notice of the claims bar date, disclosure statement, and plan of reorganization in its case; (3) the published notices gave constructive notice to the Trustee, but he failed to file any proof of claim in Guilford's bankruptcy case; and (4) the Trustee's claim arose before Guilford's plan was confirmed, and so was discharged by

confirmation, pursuant to 11 U.S.C.A. § 1141. The parties submitted planning meeting reports, and scheduling orders were entered in both adversaries. In the Excel proceeding, Guilford filed a motion in January 2004 to amend its answer, which was granted. The amended answer repeated all of the original answer, and then added two new paragraphs before the prayer for relief: one paragraph asserted a contemporaneous-exchange-of-new-value defense under § 547(c)(1), and the other asserted that the debts Excel had paid Guilford were secured by a letter of credit, so the payments did not enable Guilford to receive more than it would have received in Excel's Chapter 7 liquidation if the payments had not been made. Discovery was completed in both adversaries by the end of March 2004.

On April 16, 2004, the day the final pretrial orders were due and more than a year after filing its answers in both adversaries, rather than submitting final pretrial orders, Guilford filed motions to stay the proceedings until the Bankruptcy Court for the Southern District of New York rules on a motion Guilford filed there that same day, asking the New York court to declare that by asserting the preference claims in the Illig and Excel adversary proceedings, the Trustee has violated the discharge Guilford received when its plan of reorganization was confirmed. The Trustee objected, asking that Guilford be required to withdraw the New York motion and be sanctioned for having filed it. This Court held a hearing on the stay motions on May 13. At the hearing, Guilford informed the Court that it had been threatening to file the New York motion since last fall, and the Trustee

conceded the motion had not come as a total surprise. Objections to the New York motion are due on May 21, and the motion is set for hearing on May 26.

## DISCUSSION AND CONCLUSIONS

Guilford's argument for staying the proceedings pending before this Court is based on the underlying premise that, although it has raised its Chapter 11 discharge as a defense to the Trustee's claims here, the Trustee will be able to collect on any judgment he obtains from this Court only by filing a late claim in Guilford's bankruptcy case in New York. Guilford suggests that the Trustee has cited no authority that would permit him to collect his prepetition claims without seeking permission from the New York bankruptcy court. Apparently Guilford believes that only the New York bankruptcy court has subject matter jurisdiction to determine whether the Trustee can collect the claims from it, but it cites no authority to support this view.

Guilford correctly points out that under 28 U.S.C.A. § 1334(e), the New York bankruptcy court had exclusive jurisdiction of the property of Guilford's bankruptcy estate. But Guilford overlooks the effect confirmation of its Chapter 11 plan had on that exclusive jurisdiction. Section 1141(b) of the Bankruptcy Code provides that confirmation "vests all property of the estate in the debtor" unless the plan or order confirming the plan provides otherwise. Although Guilford has not provided this Court with much of the language of its plan or the confirmation order, one provision it has quoted mentions "Reorganized Debtors," and the Court is inclined to assume the property of the estate vested in Guilford as a "Reorganized Debtor" rather than as the "debtor" under § 1141(b). In either case,

though, the property that had been property of the estate ceased to be property of the estate following confirmation, so the exclusive jurisdiction granted by § 1334(e) ended at that time. Guilford has not pointed to anything in the plan or the confirmation order that provided for the New York bankruptcy court to retain exclusive jurisdiction over Guilford's property after confirmation. Instead, it relies on a bankruptcy court's inherent continuing jurisdiction to interpret and enforce its own orders and determine disputes under a confirmed plan.<sup>1</sup> This Court would agree that the New York court has jurisdiction to decide whether the Trustee's claims against Guilford have been discharged. The Court is simply convinced that it likewise has jurisdiction to decide that question.

Although § 1141(d)(1) appears to make confirmation discharge all preconfirmation debts without regard to the adequacy of notice that was given to the creditor owed the debt, in a number of cases, federal circuit courts, including the 10th Circuit, have held that a party's preconfirmation claim against a debtor was not barred by confirmation of the debtor's Chapter 11 plan because the party did not receive notice sufficient to satisfy the constitutional due process requirements of notice and an opportunity to present the claim in the bankruptcy case.<sup>2</sup> Furthermore, in *Reliable Electric*, the 10th Circuit expressly

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<sup>1</sup>See *In re Chateaugay Corp.*, 201 B.R. 48 (Bankr. S.D.N.Y. 1996); *In re Texaco, Inc.*, 182 B.R. 937 (Bankr. S.D.N.Y. 1995); *In re Johns-Manville*, 97 B.R. 174, 180 (S.D.N.Y. 1989).

<sup>2</sup>See *Dalton Development Project #1 v. Unsecured Creditors Committee (In re Unioil)*, 948 F.2d 678, 682-84 (10th Cir. 1991) (claims based on postpetition, preconfirmation transfers); *Reliable Electric Co., Inc., v. Olson Constr. Co.* 726 F.2d 620, 622-23(10th Cir. 1984) (prepetition claim); *Christopher v. Kendavis Holding Co. (In re Kendavis Holding Co.)*, 249 F.3d 383, 385-88 (5th Cir. 2001) (claim for pension benefits not discharged by Chapter 11 confirmation despite claimant's knowledge that bankruptcy case was pending because debtor owed fiduciary duty to beneficiaries of

rejected the debtor's argument that the only remedy for a prepetition creditor not given notice as required by due process was to file a late claim under the debtor's confirmed Chapter 11 plan.<sup>3</sup> Other circuits have similarly concluded that a creditor not bound by the plan could proceed against the postconfirmation debtor in a court other than the bankruptcy court that confirmed the debtor's plan. The Fifth Circuit held that a creditor with a preconfirmation claim against a debtor that was not discharged by confirmation of the debtor's plan did not violate the discharge injunction by filing suit against the reorganized debtor in another federal district nearly ten years after the confirmation.<sup>4</sup> The Third Circuit held that a claimant should have been allowed to proceed with its state court lawsuit to the extent it had a postpetition, preconfirmation claim that it had asserted as a counterclaim in the state court suit.<sup>5</sup> Guilford has cited no authority that disagrees with these circuits. So

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pension plan when it sought to terminate the plan to recoup surplus funds, and it sent claimant letter assuring him pension benefits would not be jeopardized by termination of pension plan); *Berger v. Trans World Airlines, Inc. (In re Trans World Airlines, Inc.)*, 96 F.3d 687, 689-90 (3d Cir. 1996) (prepetition claims not known to debtor were discharged by confirmation order despite lack of notice to claimants, but postpetition claims known to debtor were not); *Chemetron Corp. v. Jones*, 72 F.3d 341, 345-49 (3d Cir. 1995) (if claimants had been known creditors, due process would have required actual notice before Chapter 11 confirmation could bar them, but since they were unknown creditors, publication notice was sufficient to make confirmation discharge their claims); *see also Jones v. Chemetron Corp.*, 212 F.3d 199, 209-10 (3d Cir. 2001) (claimant not born until after Chapter 11 confirmation cannot be barred by the confirmation); *Sequa Corp. v. Christopher (In re Christopher)*, 28 F.3d 512, 515-19 (5th Cir. 1994) (postpetition claims barred by confirmation of Chapter 11 plan because claimants had notice of pending bankruptcy case and sufficient knowledge to impose duty on them to protect their rights in bankruptcy court).

<sup>3</sup>726 F.2d at 623.

<sup>4</sup>*Kendavis Holding*, 249 F.3d at 385-88 (affirming district court's reversal of bankruptcy court's ruling to the contrary).

<sup>5</sup>*Trans World Airlines*, 96 F.3d at 690.

if the Trustee succeeds in proving that insufficient notice was given to him, his preference claims against Guilford will not be barred even though they arose before Guilford's plan was confirmed.

Guilford's argument also overlooks the issue preclusion (or collateral estoppel) effects this Court's judgment would have if the Court does determine that the Trustee's claims were not discharged by confirmation of Guilford's plan. The Second Circuit has explained that one federal court's judgment will preclude a party from later relitigating an issue in another federal court:

if, but only if: (1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and actually decided, (3) there was full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits.<sup>6</sup>

The Tenth Circuit has described issue preclusion in similar terms, although it was addressing the effect of a prior judgment rendered by a state court:

Issue preclusion applies if: (1) the issue to be precluded here is the same as that involved in the prior action; (2) the issue was actually litigated by the parties in the prior action; and (3) the prior determination of the issue was necessary to the resulting final judgment.<sup>7</sup>

While issue preclusion sometimes involves difficult determinations, its application would be simple if this Court enters a judgment in the Trustee's favor and the Trustee tries to enforce that judgment against Guilford in the Bankruptcy Court for the Southern District of

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<sup>6</sup>*NLRB v. Thalbo Corp.*, 171 F.3d 102, 109 (2d Cir. 1999) (citations and internal quotation marks omitted).

<sup>7</sup>*Klemens v. Wallace (In re Wallace)*, 840 F.2d 762, 765 (10th Cir. 1988).



New York. Guilford has appeared before this Court, has raised the defense that the confirmation of its plan discharged the Trustee's claims, and has been actively litigating that question here, so any judgment this Court would enter that allowed the Trustee to recover from Guilford would necessarily decide that the Trustee's claims were not discharged. Guilford would not be entitled to relitigate that issue in the courts of the Southern District of New York.

Beyond the mistaken assumption that the Trustee can collect on his claims only by filing a late claim in Guilford's bankruptcy case, Guilford has not claimed that this Court does not have jurisdiction of the subject matter of these proceedings or does not have personal jurisdiction over Guilford. At most, now that the Court has rejected Guilford's mistaken assumption, Guilford is claiming that the Court should exercise its discretion to defer the discharge question to the New York bankruptcy court. Of course, Guilford was already aware of the facts underlying its stay motions before it filed its answers in these proceedings, but refrained from asking for the stays until more than a year later, on the day the final pretrial orders were due to be filed here. Had it asked for the stay early on, the Court would have been much more willing to consider having the New York court decide the discharge question. As Guilford correctly points out, a decision in its favor on that question would have foreclosed further litigation of the other issues raised in these proceedings. On the other hand, Guilford overlooks the possibility the New York court might decide that the Trustee's claims were not discharged. If that happened, the parties would have to return to this Court and proceed with the rest of the litigation now pending

here anyway. For that matter, Guilford could have sought an early decision on the discharge question by filing a motion to dismiss before this Court. Instead, it waited until essentially all the pretrial proceedings were completed and the cases were ready to be tried before it decided to institute a new proceeding in another court to obtain an answer to a potentially — but not certainly — dispositive question that this Court also has jurisdiction to decide. Whatever strategic considerations might have caused Guilford to adopt this course, they carry no weight with this Court now. The Court is convinced that any option or right Guilford might have had to seek a New York ruling on the discharge question earlier in these proceedings has been waived by its inexplicable delay in seeking that relief.<sup>8</sup>

Guilford suggests that because its bankruptcy case was filed before the Trustee filed these adversary proceedings, the New York bankruptcy court was the first whose jurisdiction attached to the discharge question, citing the Tenth Circuit’s decision in *O’Hare International Bank v. Lambert*.<sup>9</sup> The Court cannot agree. Until Guilford filed its New York motion for an order enforcing the injunction, discharge, and release provisions of its plan, that question had not been raised before the New York bankruptcy court. So far as this Court is aware, the Trustee has not appeared in the New York case, or otherwise been subjected to personal jurisdiction there. This Court believes that when the Tenth Circuit referred to one federal court’s jurisdiction having “attached” before another’s, it meant that the court not only had general subject matter jurisdiction over the dispute

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<sup>8</sup>See *Sellers v. Allstate Ins. Co.*, 83 F.3d 350, 352 (10th Cir. 1996).

<sup>9</sup>459 F.2d 328, 331 (10th Cir. 1972).

brought before it and sought to be raised in another court, but had also effectively obtained personal jurisdiction over the parties involved in the dispute before the other court obtained such jurisdiction.<sup>10</sup> These requirements were satisfied here at least when Guilford filed its answers, more than a year before it filed its stay motions. Guilford has not yet shown, however, that the New York bankruptcy court has obtained personal jurisdiction over the Trustee.

Under the circumstances, the Court concludes that it is appropriate to direct Guilford to withdraw the motion it has filed in the New York bankruptcy court. The Second Circuit has recognized that one federal court that has obtained jurisdiction over a matter can enjoin a party from pursuing litigation on the same matter in another federal court.<sup>11</sup> Guilford has not convinced the Court that anything would be gained at this late date by staying these proceedings so it can seek a determination of the discharge question from the New York bankruptcy court.

Guilford's motions to stay these proceedings are hereby denied. Guilford is hereby directed to withdraw the motion it filed in the New York bankruptcy court in April 2004, seeking an order enforcing the injunction, discharge, and release provisions of its

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<sup>10</sup>See *Hospah Coal Co. v. Chaco Energy Co.*, 673 F.2d 1161 (10th Cir. 1982); *O'Hare Internat'l Bank v. Lambert*, 459 F.2d 328 (10th Cir. 1972).

<sup>11</sup>See *City of New York v. Exxon Corp.*, 932 F.2d 1020 (2d Cir. 1991); *Coakley & Booth, Inc., v. Baltimore Contractors, Inc.*, 367 F.2d 151 (2d Cir. 1966); see also 17A Wright, Miller & Cooper, *Fed. Prac. & Pro.: Jurisdiction*, 2d, § 4247 at 121-23 (1988) (describing as "well settled" the view that one federal court before which issues are pending may enjoin going forward on the same issues in another federal court).

confirmed Chapter 11 plan. The Court does not believe that Guilford's request for the stays was presented in bad faith or was frivolous, so the Trustee's request for sanctions is hereby denied.

IT IS SO ORDERED.

Dated this \_\_\_\_\_ day of May, 2004.

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DALE L. SOMERS  
BANKRUPTCY JUDGE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the above **ORDER (1) DENYING MOTIONS BY DEFENDANT GUILFORD MILLS, INC., TO STAY PROCEEDINGS, AND (2) DIRECTING GUILFORD MILLS TO WITHDRAW THE MOTION IT HAS FILED IN NEW YORK TO ENFORCE THE ORDER THAT CONFIRMED ITS PLAN OF REORGANIZATION** were mailed via regular U.S. mail, postage prepaid, on the \_\_\_\_\_ day of May, 2004, to the following:

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Vicki D. Jacobsen, Judicial Assistant to  
The Honorable Dale L. Somers,  
United States Bankruptcy Judge